IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8664 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYAPARAKASH C SHAH - Petitioner
Versus
STATE OF GUJARAT & 1 - Respondents

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Appearance :
MRS KETTY A MEHTA for Petitioner : 1,
MR KJ DWIVEDI ASST GOVERNMENT PLEADER for Respondents : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 26/07/2007

ORAL JUDGMENT

1. The petitioner has moved this Court under Article 226 of the Constitution of India for seeking appropriate placement in the seniority

list on the basis of his initial date of recruitment as Supervisor and for consequential benefits accrued therefrom.

2. The facts in nutshell are as under.

The petitioner was appointed as Supervisor on regular basis in Surat District Panchayat with effect from 2.1.1967. As per say of the petitioner, he was confirmed as such on 26.1.1967. The petitioner, thereafter requested his transfer to Bharuch District Panchayat, which came to be accepted and thus, he was transferred from Surat District Panchayat to Bharuch District Panchayat with effect from 9.4.1973. The seniority list showing the position of Supervisor in the State list should have reflected his date of appointment on 2.1.1967 as it is in case of other employees. The benefits of continued position is required to be granted and accordingly his date in the general seniority list ought to have been 2.1.1967 instead thereof, his date was shown to be 9.4.1973 i.e the date on which he was transferred and absorbed in Bharuch District Panchayat.

3. Ms. Mehta, learned counsel appearing for the petitioner has placed on record the communication dated 1.1.1990 and 12.3.1990 indicating that petitioner has been accorded the

date i.e. 2.1.1967 for the purpose of his seniority as he was appointed on that date and therefore, the main grievance of the petitioner is redressed. However, the consequential benefits arising from assigning date i.e. 2.1.1967 to the petitioner has not been accorded. Ms. Mehta, has submitted that despite these communications, the State list was not rectified and in the said list, his date of appointment remained as 9.4.1973 i.e the date on which he joined at Bharuch District Panchayat.

4. Shri Dwivedi, learned AGP could not effectively resist this petition as even affidavit-in-reply is not filed by any respondents as it is not there on the file.

5. In absence of any affidavit-in-reply, the contention and averments made in the petition and submissions made at bar have to be accepted.

The respondent No. 1 is hereby directed to consider the case of the petitioner for promotion to the post of Deputy Executive Engineer on the basis of his assigned date in seniority i.e. 2.1.1967. Taking that to be of his initial date of appointment, on whichever date the petitioner is due for promotion, is to be considered and suitability for promotion shall be adjudged as he was being considered on that date for promotion for the post of Deputy

Executive Engineer. If in case, it is found that on the date on which he was required to be considered for promotion, then, appropriate order of deemed date be granted. The petitioner has retired on attaining the age of superannuation with effect from 31.10.2001 and therefore, now, there will have to be refixation of his pension on that basis. The entire exercise of adjudging the petitioner's suitability on the date on which he was due for promotion on the post of Deputy Executive Engineer taking into consideration his date of appointment i.e. 2.1.1967 be completed within three months from the date of receipt of this order. Special Civil Application is accordingly allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(S.R.BRAHMBHATT, J.)

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